



REGULAR MEETING
PUBLIC EMPLOYEES' RETIREMENT BOARD

NOVEMBER 9, 2006

The regular meeting was called to order by President Carey at 8:30 a.m. Thursday, November 9, 2006. Roll call was taken with all members of the Board being present, including Terry Smith who attended via conference phone. Board members and staff present were:

Carole Carey, President
John Paull, Vice President
Robert Griffith, Member
Jay Klawon, Member
Troy McGee, Member
Elizabeth Nedrow, Member
Terry Smith, Member
Roxanne Minnehan, Executive Director
Melanie Symons, Legal Counsel
Scott Miller, Legal Assistant
Linda Owen, Secretary

OPEN MEETING

Jim Christnacht and Stephen C. Kologi, AMRPE; Tim Jones, Great-West Retirement Services; Jim Kembel, MPPA, MACOP, TIAA-CREF; Tom Schneider, MPEA; Nanette Gilbertson, MSPOA; Steve Bullock, Attorney, MPPA; Jacqueline Lenmark, Keller Law Firm; Troy Holt, Kalispell Police Department; Rick Ryan, Matt Norby, Scott Moore, Jack Trethewey, and Ed Regele, members of the Montana State Firemen's Association; and Kim Flatow, Member Services Bureau Chief; Barb Quinn, Fiscal Services Bureau Chief; Kathy Samson, Defined Contributions Bureau Chief; Carolyn Miller, Administrative Officer; Rob Virts, Training and Development Specialist; Diann Levandowski, Assistant Fiscal Services Bureau Chief; and Katie Linjatje, Disability Claims Examiner, MPERA, joined the meeting.

Public Comment – *No public comment on any subject of interest to the Board not on the agenda.*

MINUTES OF OPEN MEETING

The minutes of the open meeting of October 12, 2006 were presented. Mr. McGee moved that the minutes of the previous open meeting be approved. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

EXECUTIVE DIRECTOR'S REPORT – Roxanne Minnehan, Executive Director

Personnel Committee Appointments – President Carey appointed Beth Nedrow, Jay Klawon and John Paull to the Board Personnel Committee. Beth Nedrow will chair the Committee.

Absarokee Volunteer Fire Department – Informal Consideration – The Absarokee Volunteer Fire Department is requesting that the Board accept the amended, late Annual Certificates filed on July 24, 2006 for the fiscal years 1987 through 1991, 1994 and 1995. The Annual Certificates were signed by the fire chief and notarized. Included was the training documentation by fiscal year. These years were originally late filed for the whole Absarokee VFD: 1987 received on April 1, 1988; 1988 through 1991 received April 16, 1993; 1994 received April 11, 1995; and 1995 received September 19, 1995. Gene Erlenbush was not listed on the original late filed certificates.

This is the second time these years have been late filed for the Absarokee VFD. Included are training records, two letters requesting Board review, and two letters from MPERA.

Of major concern in this matter is a statement in the letter received on April 13, 2006 from Fire Chief John Noe, *"We reviewed other training records and interviewed fire members who were at the training sessions in question and believe the revised documentation to be accurate."* The concern is based on the date of the letter, April 13, 2006, and the service dates that are being requested for review 1987, 1988, 1989, 1990, 1991, 1994 and 1995. This is a large span of years between these dates.

Mr. Klawon made a motion to approve the request for past service credit for members who were not reported on the original Annual Certificates for fiscal years 1987, 1988, 1989, 1990, 1991, 1994 and 1995. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Legislation – Mr. Griffith stated the Executive Directors' report explained the Legislative Committee results and is open to questions. Mr. Klawon asked about our strategy for legislation sponsors. Ms. Minnehan responded that now that the elections are over, we do need to concentrate on sponsors. She is open to suggestions. There was brief discussion re: possible sponsors. It was suggested to wait until committee assignments and ask someone on Appropriations committee to carry our funding bill.

Funding Bill – Terry Smith requested that the amortization period for the DCRP be addressed again. Funding bill addresses all the issues created as a result of the market collapse. The collapse created an unbearable unfunded liability. The original amortization period was designed for an unfunded liability 1/3 the size of the current unfunded liability, as a result we were in violation of statute with the last 3 actuarial valuations. We will have the plan choice rate forever. The normal cost rate is not expected to be zero. Mr. Smith expects that we will be in violation again. Legislature expects this Board to address issues both immediate concerns as well as those expected to arise in the near future. Increasing the PCR will not detract from the main issue.

Mr. Smith made a motion to change the window for the DC plan amortization schedule from 10 to 17.25 years, thereby providing an initial 30 year amortization schedule for the DC plan unfunded liabilities. Discussion ensued.

It was discussed that the actuary did not see this as a problem right now. The actuary also stated that the unfunded liability being charged back to the participants is a fixed cost and the future performance of the DB plan does not affect the DC plan. There is not violation with statutes at this time.

Also discussed was the PCR-UAL calculation recognized prior investment losses of \$143,000. The PCR-UAL is a fixed amount. This is the last year the actuary will recognize any investment gains or losses – investments will be valued at the assumed rate of 8% going forward. The bill also proposes an increase in employer contributions that will go to pay off the PCR-unfunded actuarial liability. The Legislative Committee's decision weighed fairly heavily on the actuary not having a problem with the PCR-UAL amortization period. The PCR-UAL will continue to be reviewed with each valuation. We need to concentrate our efforts on the immediate funding problems and not get people confused. The PCR is complicated and not easy to understand. It was also pointed out that requesting legislation not required by actuarial reports will undermine our credibility with the legislature.

Motion died for lack of a second.

Mr. Smith questioned why we were putting in the third section in the DC plan for the future contributions when it is not an issue now and it won't be an issue for 10 years or more. Ms. Minnehan stated that we are concerned with amount of money in the DC Disability Trust Fund – one person could wipe out the entire fund. We thought that using the increase in employer contributions would be one way to fund the DC Disability Trust. Ms. Symons stated that the funding for the DC Disability Fund was just what was leftover after dividing up the employer contribution rate. Mr. Smith opposed this addition, stating this is not a problem now and should not be dealt with in this bill without an analysis.

Mr. Smith made a motion to strike 19-3-2117(2)(b)(iii), MCA, and any other similar references, directing additional employer contributions to the long-term disability trust fund. Mr. McGee seconded the motion for discussion purposes. Upon being submitted to vote, the motion died with Mr. Smith voting aye, and Mr. Klawon, Ms. Nedrow, Mr. Paull, Mr. McGee and Mr. Griffith voting nay.

Mr. Griffith made a motion to accept the funding bill with two amendments:

- 19-3-2117(2)(b) – change 2008 to 2009
- 19-3-2117(2)(b)(iii) – add (iii) identical to (c)(iii).

Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with six of the attending members voting aye, and Mr. Smith voting nay.

Ms. Minnehan reported that initially the Budget Office stated that they would like to phase in the employer contribution rate increases at $\frac{3}{4}$ the first increase and approximately $\frac{1}{4}$ of the shortage

the next biennium. However, right after the Legislative Committee meeting we were told that suggestion was for TRS only.

The Budget Office also stated they would like to amend our bill to include a statutory appropriation to pay for the increase in employer contributions for school districts only. They will be doing this in the TRS funding bill and they will also be infusing another \$100 Million in the TRS.

The funding bill was updated with the actuarial determined contribution rates for the three retirement systems: PERS, GWPORS and SRS, as:

Contribution Rate Increases			
	PERS	GWPORS	SRS
July 1, 2007	0.56	0.04	1.03
July 1, 2009	0.57		1.02

The lump sum deposits to the three retirement systems required as of June 30, 2007, to make the current statutory contributions sufficient over a thirty-year period from the last valuation date are:

Lump Sum Requirements			
	PERS	GWPORS	SRS
June 30, 2007	\$185,216,000	\$219,000	\$15,011,000

GABA – The Budget Office is proposing to reduce the GABA for new hires. They are considering reducing from 3% to 2% or 1.5%. The actuary performed an analysis. Normal Cost will decrease slowly until all members entitled to the current GABA have left the systems.

- 2% GABA – Funding rates reduced over 30 years ranging from 0.53% for PERS to 1.41% for Municipal Police Officers' Retirement System.
- 1.5% GABA – Funding rates reduced over 30 years ranging from 0.75% for PERS to 2.01% for Municipal Police Officers' Retirement System.
- 2% GABA
 - PERS UAAL amortizes over 43.6 years (not within the 30 year requirement)
 - GWPORS amortizes over 15.5 years
 - SRS does not amortize
- 1.5% GABA
 - PERS UAAL amortizes over 35.6 years (not within the 30 year requirement)
 - GWPORS 13.4 years
 - SRS amortizes over 56.9 years

We don't know what the budget office will propose, perhaps the 1.5% to make us like TRS. Mr. Klawon stated this will make the DC plan more attractive. Discussion ensued. The Board has a responsibility per statute to try and improve the situation of our retirees, two tiers do not work, if the reason for the rollback is to be like TRS – it isn't a good reason. TRS has a lot issues that made their funding poor. We have systems that are actuarially sound – they should not be penalized by having the GABA rolled back. Also, inflation has been near 3%.

Board consensus:

- Terry Smith opposed decrease
- Jay Klawon opposed decrease
- Beth Nedrow opposed decrease
- John Paull strongly opposed decrease
- Carole Carey strongly opposed decrease
- Troy McGee strongly opposed decrease
- Bob Griffith opposed decrease

Public Comment – Rick Ryan, MSFA stated they also didn't like two tiers. Also, shouldn't penalize systems that are OK. Tom Schneider, MPERA – normal cost for PERS includes the benefits. New employees pay for their benefits by paying the normal cost. New employees should not have to pay for the problem we have because the benefits today were not funded.

DC Loan – The Budget Office is proposing to put the cost to payoff the DC Loan in the appropriations bill, HB2. We want to keep our bill just in case this provision is amended out from HB2.

DROP – The actuary completed his analysis of the DROP and the request of MPORS to eliminate the employee contributions. The original intent when structuring the DROP was to keep the plan cost neutral which was why the contributions needed to continue. The analysis shows that the DROP is currently not cost neutral – the DROP extended the amortization period by one year. The analysis also determined that more people participated in the DROP than originally anticipated. The number of participants is assumed to increase even greater if member contributions are eliminated. Eliminating member contributions for new and current employees increases the cost, makes the DROP more attractive and extends the amortization period by 3.7 years. The actuary also stated that public safety systems' amortization periods should be closer to 20 years. This information was provided to Steve Bullock, who is in the audience, as requested by the police association.

Public Comment – Steve Bullock, attorney for MPPA. Montana is an anomaly by having contributions continuing into the system. Active members in the program have over 20 years of service. MPORS is well-funded. The association may retain their own actuary to review. Mr. Bullock urged the Board to remain neutral. He is hopeful that more information will be presented to make the Board less inclined to oppose.

The Board tabled making a decision on the DROP at this time.

ICE Miller – Fiduciary Presentation – Mary Beth Braitman and Terry Mumford, the Board's tax consultants from ICE Miller will present a fiduciary program for the Board and staff on Friday, December 15, 8:30 – 11:30 am.

RFP Questions and Answers – Kathy Samson provided copies of questions from possible offerors to the RFP specifications and the provided responses. All questions and responses were basic that required no changes or modifications to the RFP specifications. The questions and responses were posted by the State Procurement Bureau as an addendum to the RFP.

Pensions & Investments DC Conference Report – Board member Robert Griffith and staff members Melanie Symons and Kathy Samson attended the Pensions & Investments DC Conference on October 8 through October 10. Mr. Griffith noted that a primary theme was that people are saving enough to reach age 70, but living far longer. All reported that the conference was beneficial, provided good information relative to the new Pension Protection Act, investment default option guidance from the Department of Labor, and interaction and networking with both public sector plan administrators and private sector plan administrators.

MPERA Staffing – Ms. Minnehan reported we currently have three vacant positions: 1) Administrative Support position was vacated October 10. An offer will be made today with the successful applicant starting November 27th. 2) Paralegal is a new position. This position was reposted because no applications were received the first posting. It closed, November 6, 2006. We have five applications and will be interviewing the first part of December due to workload. 3) Auditor is a new position. Job profile is being created.

We also have three positions that will be vacated soon. 1) Board Secretary (Linda Owen) has been offered a position at DPHHS starting November 17. We will be reviewing the job profile and starting the recruitment process. Hope to fill by late January. 2) IT Manager (Kim Susag) is retiring, effective 12/31/06. The vacancy announcement has been posted. It closed November 13th with plans to interview the week of November 27th. 3) Refund Clerk (Doreen Charlton) – retiring, effective 12/31/06. Staff is currently working on the selection criteria. Plan to post by end of November with an offer by the first of January.

The Board presented Linda Owen with a small gift and a framed *Certificate of Appreciation* for her 20 years as Board Secretary. President Carey thanked Linda for the great job she has done all these years. She will be missed by all.

Board of Investments Update – John Paull gave an update on the Board of Investments (BOI). The PERS Asset/Liability study will be completed early to mid-January. BOI has 7 managers in the Real Estate Investment Pool. Target allocation is 5-8% over 2½ years. Mr. Paull also discussed the recent RFP process for non-large cap domestic equity.

Litigation – Mr. Miller provided an update regarding the Baumgardner case. The trial is scheduled for Monday, November 13. There was a pre-trial conference the week before the Board meeting, at which the parties agreed to a number of stipulated facts.

Ms. Symons gave a brief litigation update. We have received no further communication from the IRS regarding our proposed voluntary correction plan on 125 plan issues. The hearing on the motion for summary judgment in the Teichrow matter is scheduled for 1:30 on January 11th. Since January 11th is a Board meeting day and the recordkeeper/administration RFP interviews are scheduled for that day, the Board asked to have the hearing moved. Melanie will contact Beth Baker regarding the Board's request. There has been no decision issued on the attorney fees question in the MANG lawsuit.

Future Board Meetings – Thursdays: January 11, February 8, and March 8, 2006.

Next SAVA Meeting – The next SAVA Committee meeting is November 28 and 29, 2006.

Next Board Legislative Committee Meeting – The next Board Legislative Committee meeting is December 6, 2006.

Next Joint Issues Committee Meeting – The next Joint Issues Committee meeting is December 13, 2006.

RFP Schedule – The RFP Schedule was included in the Board packet.

Operational Summary Report - The Executive Director presented an operational summary report for the month of September 2006, answering any questions Board members had.

The following portion of the meeting relates to matters of individual privacy. President Carey determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.

CLOSED MEETING

MINUTES OF CLOSED MEETING

The Executive Director presented the minutes of the closed meeting of October 12, 2006. Mr. Klawon moved that the minutes of the previous closed meeting be approved. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

RETIREMENT REPORT – Kim Flatow, Member Services Bureau Chief

Disability Claims – Ms. Linjatie presented the disability claims for Board consideration. Mr. Paull made a motion for approval of the disability claims as recommended for Richard Dahlgren, Mary Fitzpatrick, and Roxanna Kimmett, with annual review; for Thomas Fenton, Russell Hamilton, and Erv Kane, Alan Riley, without annual review. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Disability Review - Ms. Linjatie presented the disability review for Joanne Horn to the Board. After discussion, Mr. Paull made a motion to approve the disability reviews as recommended: to continue disability retirement and continue annual review for Joanne Horn. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Finalized Service/Disability Retirement Benefits and Monthly Survivorship/Death Benefits - Applications for service retirements/finalized disability benefits and applications for monthly survivorship-death benefits were presented to the Board. Mr. Griffith made a motion to approve the retirement benefits as presented. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Contested Case Report Update - The Board Attorney and Legal Assistant presented contested matter status report updates.

Ms. Symons reported on several matters. A hearing in Gilbert v. City of Dillon has been rescheduled for December 8 and 13, 2006. MANG decision on attorney fees decision is still pending before Judge McCarter. According to Rick Larson, the Halverson matter has been fully brief and submitted to Mona Jamison, hearing officer. The Vanden Heuvel withdrew his retirement account, rendering him ineligible for a disability benefit. However, there has still not been an order issued by the hearing examiner dismissing the matter. Richard Golden has requested a contested case hearing on his class action regarding the ad hoc increase to his MPORS retirement benefit despite the information Kim and Melanie provided explaining that Missoula retirees were treated the same as other state-wide MPORS retirees. Lu Goodrum has dropped her appeal regarding the amount of her retirement benefit.

Mr. Miller provided an update regarding the situation with the Lodge Grass School District. The Lodge Grass administration has not provided any information on its progress in furnishing MPERA with the necessary information to determine whether it accurately reported its employees in the past. We have asked the Office of Public Instruction for its help in resolving the matter.

CONTESTED CASES

Prior to consideration of contested case matters, Ms. Symons explained that MPERA staff has determined to use initials rather than names of individuals involved with matters that are confidential. Mr. McGee explained that 15 years ago, the Board determined to use names so that the Board is not “hiding” anything regarding the matters they hear in closed meeting. Ms. Symons and Mr. Miller responded that the law has changed. Montana law, Board policy, and HIPAA all require us to keep the names confidential. Mr. McGee would prefer to have the name, but no additional information regarding the proceeding before the Board. Ms. Nedrow and President Carey agree that HIPPA is relatively new and requires confidentiality. Ms. Nedrow commented that using initials would be consistent with the Governor’s position. Ms. Minnehan mentioned that she has started including more information in the agenda, causing more information to be made available than was available before. Mr. McGee still disagrees but the ultimate conclusion was to use initials.

JKT – Contested Case Update – JKT has appealed the Board’s August 10, 2006 determination that he would receive TRS service credit in PERS on a month-for-month basis.

While preparing for contested case proceedings, Ms. Symons conducted additional research to determine legislative intent. Section 19-3-511, MCA, was originally adopted in 1983. At that time, subsection (2) stated: “A member may at any time before his retirement make a written election with the Board to qualify in the public employees’ retirement system all of his creditable service in the Teachers’ Retirement System.” Subsection (4) stated that the service would be granted on a month-to-month basis. These two subsections appear inconsistent. Statutory language has changed several times since 1983, however none of the changes clarify how much TRS service should be credited to PERS. Legislative history tends to support subsection (2).

The Board has several options:

1. Determine that JKT, and all others similarly situated, receive the same amount of service credit in PERS as they received in TRS.
2. Await a hearing officer and ultimately a court determination ordering the Board to exercise Option 1.
3. Argue that language changes in 1993 resulted in the implementation of the “month-to-month” language and that PERS members hired after that date can receive only month-to-month service. Option 3 would result in JKT receiving full years of service, but would reduce the number of other individuals impacted.

Ms. Nedrow made a motion to approve option #2, to await a hearing officer and ultimately a court determination ordering the Board to exercise option #1, which is to determine that JKT, and all others similarly situated, receive the same amount of service credit in PERS as they received in TRS. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

TH - Informal Reconsideration –

TH discussed with the Board how his medical condition was impacted by working shifts through his employment. Mr. Klawon moved to approve a disability retirement without annual review for TH. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

SCW – Contested Case Update – For the record, Mr. Griffith agreed not to participate in any way.

SCW retired from the Montana Highway Patrol Officers’ Retirement System with a disability benefit. SCW has not elected to participate in GABA. Section 19-6-707(1)(a) and (b), MCA respectively, provide that retired members age 55 years or older (unless employed in a position covered by a Title 19 retirement system) and retired members receiving a disability retirement benefit, receive a monthly benefit “of not less than 2% multiplied by the member’s service credits multiplied by the current base compensation received by a probationary highway patrol officer.”

SCW received increases in his disability retirement benefit consistent with 19-6-707(1)(b), MCA, until he turned 50 years of age, when his disability retirement converted to a service retirement benefit. Staff then determined that his retirement benefit became subject to 19-6-707(1)(a) and that the minimum monthly benefit increases must stop until he reaches age 55. Following this determination, SCW requested to participate in GABA. Both staff and the Board denied the request. After conducting additional research, staff now requests the Board reconsider SCW’s situation and permit him to continue receiving the minimum monthly benefit increase provided for in 19-6-707, MCA.

Mr. Klawon moved that the Board order that SCW continue to receive the minimum monthly benefit increases contained in 19-6-707, MCA, despite the fact his disability benefit was properly

converted to a service retirement benefit at age 50. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with six of the attending members voting aye, and Mr. Griffith abstaining.

MS, MB and CE - Informal Request – MS, MB and CE are employed by the city of Billings as police officers. They all previously requested to and were provided the cost to purchase reserve service with the city of Billings. This reserve service occurred prior to full-time employment with the city. Each member remitted payment for the purchase of their respective reserve service.

Another active Billings police officer recently requested the cost to purchase reserve service. At that time, it was determined by the staff and the Board that there are no statutory provisions allowing the purchase of this service. The member's request was denied.

Subsequently, MS, MB and CE were notified that the purchased reserve service was to be removed from their total service credit for retirement. The officers have requested the Board to review this decision.

Section 7-32-202, MCA, prohibits a reserve officer from participating in a retirement system designated for a full-time officer. Thus, in staff's opinion, these officers could neither participate in the (MPORS) as reserve officers, nor buy their reserve officer time into MPORS at a later date. Additionally, there are no provisions in the MPORS that would allow a member to purchase the reserve service.

Mr. Klawon moved that the Board uphold the previous staff decision and direct the return of funds accepted for the purchase of the reserve service by MS. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Mr. Klawon moved that the Board uphold the previous staff decision and direct the return of funds accepted for the purchase of the reserve service by MB. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Mr. Klawon moved that the Board uphold the previous staff decision and direct the return of funds accepted for the purchase of the reserve service by CE. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

Proposed Settlement Offer – WG – The issue before the Board is whether WG is acting as an employee of the City or as an independent contractor while performing his city attorney duties. WG is represented by Jacqueline Lenmark. Ms. Lenmark and Ms. Symons interviewed city employees and public officers, trying to determine the true facts behind WG's status. They also worked closely together to determine the issues of concern to all involved, and to craft a settlement that meets those interests.

Mr. Klawon moved that the Board approve the proposed Settlement Agreement for the following case: IN THE MATTER OF THE PERS ELIGIBILITY OF WG, with modification to paragraph 5, contingent on approval by the City of the draft employment agreement. Ms. Nedrow seconded

the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye.

ADJOURNMENT

There being no further business to come before the Board at this date, Mr. Klawon made a motion to adjourn the meeting. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the seven attending members voting aye. The next meeting is tentatively scheduled for December 14, 2006, at 8:30 a.m. in Helena.

EXECUTIVE SESSION

The meeting went into executive session to discuss the Executive Director's performance.